IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 287 of 1984
With
CROSS OBJECTION No. 19 of 2007
In
FIRST APPEAL No. 287 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOKILABEN WD/O POPATLAL BHOGILAL SHAH & 3 - Appellant(s)
Versus
BADRKAKANT DAMJI NANAK & 5 - Defendant(s)

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Appearance :
MR NITIN M AMIN for Appellants
MR RAJNI H MEHTA for Respondents : 1 - 3
None for Respondent : 4
MR DN VAKIL for Respondent : 5

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

COMMON ORAL JUDGMENT

1. Shri Nitin M. Amin, learned counsel for the appellants; Shri Rajni H. Mehta, learned counsel for the respondents no. 1, 2 and 3; Shri D.N. Vakil, learned counsel for the respondent no.5; none for the respondent no.4 and 6.
2. The appellants-claimants, being aggrieved by the judgment and award dated 15th April, 1983 made in M.A.C. Petition No. 278 of 1981 by the learned Member, M.A.C.Tribunal, Himmatnagar, exonerating the respondent no.1 – Bhadrakant Damji Nanak respondent no.2-Sabarkantha Disrict Cooperative Milk Producers Union Limited and respondent no.3-Oriental Fire and General Insurance Company Limited, are before this Court.
3. The claimants submit that deceased Popatlal Bhogilal Shah was travelling in jeep No. GRS 2565, which was going from Ahmedabad towards Himmatnagar, the jeep was driven by respondent no.4-Amratlal Ranchhodbhai Patel, it was owned by respondent no.5-Jagdishbhai Chhaganbhai Patel and was insured with the respondent no.6 United India Insurance Company Ltd. When jeep No. GRS 2565 reached some distance, jeep No. GRA 8239

owned by respondent no.2 Sabarkantha District Cooperative Milk Producers Union Limited and insured with the respondent no.3 Oriental Fire & General Insurance Company Limited, driven by respondent no.1 Bhadrakant Damji Nanak, came from the side of Himmatnagar. It was driven rashly and negligently and hit the other jeep in which the deceased was travelling. As a result of the collision, the deceased was thrown overboard and died on the spot. The claimants claimed a sum of Rs. 6.00 lacs towards compensation. They submitted that in view of the headlong collision, both the jeeps must be held responsible and in accordance with the negligence, the liability be apportioned. Respondents no. 4, 5 and 6 appeared in the Court and submitted that the driver Amratlal Ranchhodbhai Patel was driving the vehicle at a modest speed. While Bhadrakant Damji Nanak, driver of jeep no. GRA 8239 stated that he was on his left side, the other jeep no. GRS 2565 was driven rashly and negligently and in its attempt to overtake a State Transport Bus, the

driver lost balance and hit jeep no. GRA 8239.

4. Learned Tribunal, after casting issues granted opportunity to the parties to lead evidence, the claimants examined one of the inmates of the jeep and also examined other witnesses, while the other side also examined witnesses to show that driver of jeep no. GRS 2565 was absolutely rash and negligent. P.W.5 Magansinh Bansisinh was examined and he had proved the panchnama showing the position of the spot. After hearing the learned counsel for the parties, the learned Tribunal held that there was no wrong with the driver of jeep No. GRA 8239, it accordingly exonerated Bhadrakant Damji Nanak - driver, Sabarkantha District Cooperative Milk Producers Union Limited -owner and the Oriental Fire & General Insurance Company Limited, insurer of the vehicles, it however, also held that the claimants are entitled to recover sum of Rs. 6.00 lacs as claimed by them, but the liability of the Insurance Company [United India Insurance Company Limited] would be limited to sum of Rs. 10,000/- only. The claimants, being aggrieved by

exoneration of the driver, owner and insurer of jeep no. GRA 8239 are before this Court.

5. Shri Amin, learned counsel for the claimants, after taking me through the evidence submitted that principles of *res ipsa loquitur* would apply with full force. It would clearly appear that drivers of each of the jeeps were negligent and each of the driver with their respective owners and Insurance Companies should be held liable 50% each. He submits that statement of P.W.3 Hasmukhlal Mohanlal Shah could not be lightly brushed aside. Shri Rajni H. Mehta, learned counsel for the respondents no. 1 to 3, however, placing great reliance upon the statement of P.W. 5 Magansinh Bansisinh – panch witness and statement of other witnesses submitted that the facts would speak for themselves. From the spot map, it would clearly appear that driver of jeep no. GRS 2565, in his zeal to overtake S.T. Bus, left the left side of the road, came to extreme right and hit jeep no. GRA 8239. He also submits that the spot map would show that the jeep no. GRA 8239, even

after the accident did not leave the road, while jeep no. GRS 2565 not only left the side of the road or road flank, but went in a ditch at a distance of 500 feet. He submits that the learned Tribunal was absolutely justified in exonerating the driver of jeep no. GRA 8239.

6. It is to be noted that Bhadrakant Damji Nanak, driver of jeep no. GRA 8239, its owner and Insurance Company have also filed some Cross Objections though they were totally exonerated by the learned tribunal. At the time of hearing, Shri Rajni H. Mehta, learned counsel for these respondents, however, submitted that these Cross Objections in fact, are in form of submissions to avoid any liability, but if the appeal is dismissed, no orders on the Cross Objections are required.

7. Shri D.N. Vakil, learned counsel for the owner of jeep no. GRS 2565, however, submitted that the owner, Insurance Company and driver of jeep no. GRS 2565 have not filed any Cross Objections. He, however, submitted that the dispute in fact, is between the claimants and

the driver, owner and Insurance Company of jeep no. GRA 8239.

8. I have heard the parties and have gone through the records.

9. So far as the question of quantum is concerned, this Court is not required to make any interference in the same, because, said amount has not been challenged by filing Cross Objections. Limited liability of the insurer of jeep no. GRS 2565 has also not been challenged, therefore, the said liability would remain as it is.

10. In the statement of P.W.5 Magansinh Bansisinh – panch witness, the spot map was proved. The Court is required to recreate the spot position by applying little guess work after taking into consideration the statement of the panch and the spot memo prepared immediately after the accident. The spot map prepared in this case shows that the road from Ahmedabad to Himmatnagar is south-north road, it is almost about 20 feet wide. Jeep no. GRS 2565 was proceeding from Ahmedabad towards Himmatnagar,

while jeep no. GRA 8239 was coming from Himmatnatar towards Ahmedabad. Spot map testified and proved by P.W.5 Magansinh Bansisinh would show that after the accident, oncoming jeep No. GRA 8239 was found on its left, that is, on the eastern side of the spot, while jeep no. GRS 2565 which was supposed to be on the western side of the road had not only crossed the entire road and the road flank, but had gone to a distance of 500 feet and had fallen in a ditch.

11. Shri Amin, learned counsel for the appellants-claimants submits that from the facts, it would clearly appear that right side of the vehicles collided with each other and under the circumstances, jeep no. GRS 2565 was thrown and went in the ditch. It cannot be disputed that when two vehicles collide headlong, they would remain on the spot unless steering of the vehicles is swayed to some side. If both the vehicles collide with each other on right side of the vehicle, then, each of the vehicles would go to its left, because, impact would

change the direction of the vehicle. In the present case, jeep no. GRS 2565, instead of going towards left had gone to extreme right and fell in the ditch which would clearly show that the vehicle left its course and collided with the oncoming jeep and after crossing the road flank, fell in the ditch.

12. So far as the statement of P.W. 3 Hasmukhlal Mohanlal Shah is concerned, his submission only is that the on coming vehicle was driven rashly and negligently. Other side has also examined witnesses to prove otherwise. Learned Tribunal has given cogent reasons to rely upon the statements of defence and rejected the theory propounded by P.W. 3 Hasmukhlal Mohanlal Shah. From the statements of defence witnesses, it would clearly appear that the driver of GRS 2565 was trying to overtake S.T. Bus and in his zeal to overtake, he left the main course, came on the right side of the bus and the road and thereafter collided with oncoming jeep no. GRA 8239. If this is the situation and this is the evidence available on the records, then, driver

of the oncoming jeep Bhadrakant Damji Nanak cannot be held liable nor the Court would be able to hold that that there was any contributory negligence.

13. The learned tribunal has given cogent reasons to not rely upon the statement of P.W. 3 Hasmukhlal Mohanlal Shah and rightly relied upon the statements of the defence witnesses. After taking into consideration the evidence available on the records and the reasonings given by the learned Tribunal, I am unable to hold that the present matter calls for any interference.

14. The appeal deserves to and is accordingly dismissed. No costs.

15. Consequent upon dismissal of the appeal, Cross Objections No. 19/07 are also dismissed.

[R.S. GARG, J.]

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